

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION

Plaintiffs :

v. :

JEFFREY A. BEARD, et al., :

Defendants : NO. 02-CV-2949

ORDER

AND NOW this day of January, 2008, it is ORDERED that the
“Motion in Complaint” of Ronald Clark (Document 336) is DENIED.

TIMOTHY J. SAVAGE, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
JEFFREY A. BEARD, et al., :
Defendants : NO. 02-CV-2949

DEFENDANTS' RESPONSE IN OPPOSITION TO
"MOTION IN COMPLAINT" FILED BY RONALD CLARK (DOCUMENT 336)

An inmate at the State Correctional Institution at Greene County named Ronald Clark has filed a "Motion in Complaint" in which he complains about his institution's handling of a piece of mail that he sent to a court but was returned by the Postal Service for insufficient postage. He complains that upon receipt of the item back from the Postal Service, the institution mail room staff opened the envelope outside the inmate's presence. He complains that this opening violated this Court's injunction entered May 3, 2007. However, Mr. Clark's situation does not fall within the injunction.

This case, and the Court's injunction, dealt with mail coming into the prisons addressed to inmates from attorneys and courts. The injunction required that all such mail appearing from the return address to be from an attorney or court be opened for the first time in the prison in the presence of the addressee inmate.

The item about which Mr. Clark complains was not incoming mail or, if it was, it wasn't sent to him by an apparent attorney or court. The item might not

be considered incoming mail because it was Mr. Clark's own outgoing mail and it never left the Postal Service. However, if it was incoming mail when it was returned to the prison, it was coming from the Postal Service, or from Mr. Clark, not from an attorney or court. Therefore, the situation Mr. Clark presents does not fall within the injunction.

Mr. Clark does have a means of raising his complaint within the Department of Corrections, and he is pursuing it. As the Court knows, the Department of Corrections has a written policy on Inmate Mail Privileges (DC-ADM 803). The situation Mr. Clark presents requires some interpretation of that policy. The Department of Corrections also has a written Inmate Grievance Procedure (DC-ADM 804) through which the Mail policy can be interpreted.

Counsel has been informed that Mr. Clark has filed a grievance making the complaint that he makes in his Motion here. At the first level, the SCI-Greene Business Manager responded that the item was incoming unprivileged mail and was treated like all incoming unprivileged mail. Mr. Clark appealed this response to the SCI-Greene superintendent. The superintendent responded that although the mail room staff properly considered the returned mail as unprivileged incoming mail, the better process would have been to open and inspect it in Mr. Clark's presence in light of the provisions in the DC-ADM 803 on outgoing mail to courts. Presumably, the superintendent was referring to the provisions stating that outgoing mail to courts is privileged and is not to be opened outside the sending inmate's presence. Although Mr. Clark's returned mail was no longer "outgoing," it may have been still sealed as when it

was outgoing. The superintendent also said that this better process would be followed in similar situations in the future. If Mr. Clark is dissatisfied with the superintendent's response, he can appeal further to a central Office of Inmate Grievance Appeals.

So, Mr. Clark's complaint doesn't fall within this Court's injunction. It is being reviewed by the Department of Corrections. The Court has no jurisdiction, and no need, to become involved.

Incidentally, Mr. Clark seems most concerned that his mail to the court was delayed. If it was, the delay had nothing to do with the fact that it was opened in the mail room upon return from the Postal Service. The time involved would not have been shorter if it had been opened in Mr. Clark's presence (after passing through the mail room) upon its return.

THOMAS W. CORBETT, JR.
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CERTIFICATE OF SERVICE

I, John O. J. Shellenberger, hereby certify that DEFENDANTS' RESPONSE IN OPPOSITION TO "MOTION IN COMPLAINT" FILED BY RONALD CLARK (DOCUMENT 336) has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System. The ECF System's electronic service of the Notice of Electronic Case Filing constitutes service on the following, who has consented to electronic service:

Teri B. Himebaugh, Esquire.

I further certify that a true and correct copy of DEFENDANTS' RESPONSE IN OPPOSITION TO "MOTION IN COMPLAINT" FILED BY RONALD CLARK (DOCUMENT 336) was mailed on January 8, 2008, by first class mail, postage prepaid to:

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